

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1181 be amended to read as follows:

- 1 Page 1, line 4, delete ".".
- 2 Page 1, line 4, after "jurisdiction" insert "**under this chapter.**
- 3 **This Section does not apply to a corporation organized or**
- 4 **operating under IC 8-1-13."**
- 5 Page 1, line 7, delete "over" and insert "**under**".
- 6 Page 1, line 8, after "jurisdiction" insert "**over the utility**".
- 7 Page 2, line 8, after "utility" insert "**if the utility is a for-profit**
- 8 **utility**".
- 9 Page 2, between lines 26 and 27, begin a new paragraph and
- 10 insert:
- 11 "**(4) If the utility is a non-profit business organization:**
- 12 **(A) the effect of the penalty on the corporation's**
- 13 **members, including the effect of the penalty on the**
- 14 **members' capitalization of the organization; and**
- 15 **(B) whether the act or failure causing violation or**
- 16 **noncompliance had been approved at a regular or other**
- 17 **duly called meeting of the organization's members or**
- 18 **directors."**
- 19 Page 3, line 4, delete ".".
- 20 Page 3, line 38, after "jurisdiction" insert "**under this chapter.**
- 21 **This section does not apply to a corporation organized or operating**
- 22 **under IC 8-1-13."**
- 23 Page 3, line 40, after "service" insert "**subject to its jurisdiction**
- 24 **under this chapter**".
- 25 Page 4, line 1, after "provide" insert "**the**".
- 26 Page 4, line 2, after "provide" insert "**the**".
- 27 Page 4, line 10, after "utility" insert "**over which the commission**

1 has jurisdiction under this chapter".

2 Page 4, after line 31, begin a new paragraph and insert:

3 "SECTION 5. IC 8-1-13-17.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2001]: Sec. 17.5. (a) If, after notice and
6 hearing, the commission finds that a local district corporation or
7 general district corporation that has not withdrawn from the
8 commission's jurisdiction under section 18.5 of this chapter has:

- 9 (1) violated a provision of this title; or
10 (2) failed to comply with any part of an order;
11 concerning a matter over which the commission retains
12 jurisdiction under section 18.5 of this chapter, the
13 commission may act as provided in subsection (b).

14 (b) The commission may issue an order that does one (1) or more
15 of the following if the commission makes a finding under
16 subsection (a):

- 17 (1) impose a penalty of not more than twenty-five thousand
18 (\$25,000) dollars for each violation or noncompliance. For
19 purposes of this subdivision, the commission may
20 consider each day a violation or noncompliance occurs to be
21 a separate violation or noncompliance;
22 (2) issue an order that the corporation cease and desist from
23 the violation or non-compliance;
24 (3) issue an order mandating corrective action to alleviate the
25 violation or non-compliance.

26 (c) The commission shall consider the following when determining
27 the appropriateness of imposition or the amount of a civil penalty
28 or compromise amount:

- 29 (1) the size of the local district corporation or general district
30 corporation;
31 (2) the gravity of the violation or non-compliance;
32 (3) the good faith of the corporation in attempting to remedy
33 the violation or achieve compliance after receiving notification
34 of the violation or non-compliance;
35 (4) the effect of the penalty on the corporation's members,
36 including the effect on patronage capital credits allocated to
37 the members;
38 (5) whether the act or failure causing violation or non-
39 compliance had been approved at a
40 regular or other duly called meeting of the corporation's
41 members or director's.

42 (d) This section shall not apply when the violation or failure of
43 the utility was caused by any of the following:

- 44 (1) Customer provided equipment.
45 (2) The negligent act of a customer.
46 (3) An emergency situation.
47 (4) An unavoidable casualty.
48 (5) An act of God.

49 (e) The attorney general shall bring an action in the name of the
50 state of Indiana to enforce an order of the commission under
51 subsection (b), including the collection of an unpaid civil penalty
52 imposed by the commission under subsection (b)(1) or (b)(2). The

1 attorney general shall bring the action in a court that has
2 jurisdiction.

3 (f) All civil penalties accruing under this section are
4 cumulative. A suit for recovery of one (1) civil penalty does not
5 bar or affect:

6 (1) the recovery of any other civil penalty or forfeiture; or

7 (2) a criminal prosecution against:

8 (A) a general district corporation or local district
9 corporation;

10 (B) an officer, a director, an agent, or an employee of a
11 public utility;

12 or

13 (C) any other person.

14 (g) The secretary of the commission shall direct any civil
15 penalties collected under this section as follows:

16 (1) Penalties assessed for violations that directly affect
17 r a t e p a y e r s s h a l l b e r e f u n d e d
18 directly to the customers of the subject corporation in the
19 form of credits on customer bills.

20 (2) Penalties assessed for violations that directly harm a
21 person that is a:

22 (A) public utility;

23 (B) municipally owned utility; or

24 (C) another corporation organized or operating under this
25 chapter,

26 shall be awarded directly to that person."

(Reference is to HB 1181 as printed February 9, 2001.)

Representative FRY